

Danny Lucero  
CDCR No. J51467  
Correctional Training Facility  
P.O. Box: 689  
Soledad, Ca. 93960

PLAINTIFF IN PRO SE

FILED

MAY -2 2019

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Danny Lucero

Plaintiff,

vs.

RALPH DIAZ, ACTING SECRETARY,  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION;

KATHLEEN ALLISON, ACTING  
UNDERSECRETARY, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION;

CRAIG KOENIG, ACTING WARDEN,  
CORRECTIONAL TRAINING FACILITY.

Defendants

Case No.

CV 19-2397 JSW

PLAINTIFF'S EX PARTE EMERGENCY  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND A  
PRELIMINARY INJUNCTION.

(PR)

PLAINTIFF'S EX PARTE EMERGENCY MOTION FOR A  
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiff, Danny Lucero, pursuant to Rule 65 of the Federal Rules of Civil

1 Procedure, moves the Court for entry of a Temporary Restraining Order and Preliminary  
2 Injunction enjoining defendants Diaz, Allison, Koenig, and all persons acting on their behalf,  
3 from, pending entry by the Court of a final judgment in this action.  
4

5 This motion is based on the following grounds:

- 6 1. With this motion for a TRO, Plaintiff filed a Verified Complaint ("complaint") alleging  
7 that Defendants herein have ordered and plan to merge Plaintiff who is a GP prisoner  
8 with SNY prisoners and/or Security Threat Group (STG) Fresno Bulldogs.  
9
- 10 2. Unless enjoined by this Court, Plaintiff will suffer irreparable injury if the merge is  
11 allowed to take place. This Court, the 9th Circuit, the U.S. Supreme Court, and  
12 Defendants own policies acknowledge the substantial risk of violence and harm that is  
13 inherent in placing such prisoners together. The fact that violence has occurred during  
14 almost every single attempt to merge such prisoners together, supports such a high  
15 probability and substantiates such a serious risk of violence and harm.  
16
- 17 3. Plaintiff herein asserts that because the action complained of within his verified  
18 complaint is so imminent, immediate and irreparable injury will result to Plaintiff before  
19 the Defendants can be heard in opposition to this motion. As such, Plaintiff should not be  
20 required to give notice of this motion at this juncture of the litigation.  
21
- 22 4. There is a substantial likelihood that Plaintiff will establish at trial that the Defendants in  
23 this case are acting with deliberate indifference to Plaintiff's Eighth Amendment right to  
24 be free from dangerous conditions and attacks from other inmates. This is supported by  
25 the attached Declarations, Exhibits and Memorandum of Law in support of hereto.  
26
- 27 5. A Temporary Restraining Order is necessary to preserve the status quo, to prevent the  
28

1 irreparable injury to the public that such merging of SNY and/or STG Fresno Bulldogs  
2 with GP prisoners would cause to the families of such prisoners as declared by the  
3 attached Declaration of Kim McGill hereto. Wherefore, granting the requested  
4 preliminary relief will serve the public interest. Any harm to Defendant from enjoining  
5 the merging of the SNY and/or STG Fresno Bulldogs with GP yards is  
6 significantly outweighed by the injury threatened to Plaintiff. Defendants sole reason for  
7 this merge is to "expand incentives to positive programming" (see Exhibit 'B' attached  
8 hereto). This merge is not based on any overpopulation, expenses or safety and security  
9 concerns and would not alter the status quo that preceded this pending litigation. This  
10 Court has authority under its inherent equitable power to grant interim injunctive relief  
11 where plaintiffs face either irreparable injury or imminent retaliation.

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13  
14 Moreover, District Courts have the discretion to waive the posting of bond by an  
15 impoverished plaintiff, especially when doing so would function to bar poor people from  
16 obtaining judicial redress. This Emergency Motion is supported by a concurrently filed  
17 Memorandum of Law in support of Plaintiff's Motion for a Temporary Restraining Order and  
18 Preliminary Injunction and including the attached Declaration of Plaintiff and Kim McGill.

19  
20 WHEREFORE, Plaintiff prays that the Defendant and all persons acting on its  
21 behalf be enjoined from merging the SNY and/or STG Fresno Bulldogs with GP prisoners at  
22 Correctional Training Facility, pending entry by the Court of a final judgment in this action.

23  
24 Dated: 4-5-19

25 Respectfully submitted,

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28 Danny Lucero, Plaintiff in Pro Se.

Danny Lucero  
CDCR No. J51467  
Correctional Training Facility  
P.O. Box: 689  
Soledad, Ca. 93960

**PLAINTIFF IN PRO SE**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Danny Lucero

Plaintiff,

vs.

RALPH DIAZ, ACTING SECRETARY,  
CALIFORNIA DEPARTMENT OF  
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UNDERSECRETARY, CALIFORNIA  
DEPARTMENT OF CORRECTIONS AND  
REHABILITATION;

CRAIG KOENIG, ACTING WARDEN,  
CORRECTIONAL TRAINING FACILITY

Defendants.

Case No.:

**MEMORANDUM OF LAW IN SUPPORT  
OF PLAINTIFF'S MOTION FOR A  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION.**

**STATEMENT OF THE CASE**

This is a civil rights action brought under 42 U.S.C. § 1983 by a state prisoner whose being placed in dangerous conditions of confinement which poses a serious risk to his safety. Plaintiff seeks a Temporary Restraining Order and a Preliminary Injunction to ensure that his safety and well-being stays protected.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION. - 1

## **STATEMENT OF FACTS**

As stated in the declarations and Plaintiff's verified complaint submitted with this motion, Defendants herein are attempting to merge/mix General Population prisoners with the Sensitive Needs prisoners and/or Security Threat Group (STG) Fresno Bulldogs at Correctional Training Facility. This has resulted in serious injuries and death.

## **ARGUMENT**

### **I. PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION**

In determining whether a party is entitled to a Temporary Restraining Order or a Preliminary Injunction, courts generally consider several factors: whether the party will suffer irreparable injury, the "balance of hardships" between the parties, the likelihood of success on the merits, and the public interest. Each of these factors favors the grant of this motion.

#### **A. The Plaintiff is Threatened with Irreparable Harm**

Plaintiff alleges that by merging the Sensitive Needs Yard and/or STG Fresno Bulldogs prisoners with the General Population prisoners at the institution he is confined is a "failure of prison officials to protect inmates from attacks by other inmates" and from "dangerous conditions" which is a clear violation of the Eight Amendment (*Farmer v. Brennan*, 511 U.S. 825, 832, 114 S. Ct. 1970 (1994)). It is well known, and well documented, that housing prisoners with safety concerns, such as Sensitive Needs prisoners (prisoners who are gang drop-outs, convicted of sex crimes, transgenders and informants) and STG Fresno Bulldogs with General Population prisoners, creates an excessive risk of assault or death. The courts have also long recognized this (see e.g., *Bylery v. Deputy Warden*, 246 Fed. Appx. 512 (9<sup>th</sup> Cir. 2007);



1 *Glick v. Walker*, 272 Fed. Appx. 514 (7<sup>th</sup> Cir. 2008); *Jones v. Blanas*, 393 F. 3d 918, 923 (9<sup>th</sup> Cir.  
2 2004)).

3 Moreover, as a result of such recent merges/mixing of such prisoners, there has  
4 been a prevalence of assaults that have took place. As such, these Defendants are well aware of  
5 such a substantial and pervasive risk of harm and therefore are acting with deliberate indifference  
6 when authorizing and conducting such merges/mixes of such prisoner populations and “[A]  
7 prisoner need not wait until he is actually assaulted to state a claim for and obtain relief” *Farmer*,  
8 511 U.S. at 845. Because these Defendants have stated that such merge/mix shall take place at  
9 Plaintiff’s institution and specific housing unit (see attached Declaration of Danny Lucero  
10 as Exhibit ‘C’), he is threatened with such irreparable harm.

### 13 **B. The Balance of Hardships Favors the Plaintiff**

14 In deciding whether to grant TRO’s and Preliminary Injunctions, courts ask  
15 whether the suffering of the moving party if the motion is denied will outweigh the suffering of  
16 the non-moving party if the motion is granted (see e.g., *Mitchell v. Cuomo*, 748 F. 2d 804, 808  
17 (2<sup>nd</sup> Cir. 1984) (holding that dangers posed by prison crowding outweighed state’s financial and  
18 administrative concerns); *Duran v. Anaya*, 642 F. Supp. 510, 527 (D.N.M. 1986) (holding that  
19 prisoners’ interest in safety and medical care outweighed state’s interest in saving money by  
20 cutting staff)).

21 In this case, the potential harm to Plaintiff if he is merged or mixed as described  
22 above, is imminent, life threatening and irreparable. The sufferings Defendants will experience if  
23 the court grants the order will consist of maintaining the status quo. These different populations  
24 of prisoners have been separated for well over two decades and was always promoted by CDCR  
25 (see e.g., *Madrid v. Gomez*, 889 F. Supp. 1146, 1241 (N. D. Cal. 1995) (requiring validated  
26  
27  
28

1 SHU prisoners to “drop-out” and “debrief”, become prison informants, thereby becoming  
2 Sensitive Needs prisoners whose lives are in serious danger)). Therefore, Defendants will not  
3 suffer if the motion for a TRO and Preliminary Injunction is granted.  
4

### 5 6 **C. Plaintiff is Likely to Succeed on the Merits**

7 Plaintiff has a great likelihood of success on the merits. What Defendants are  
8 doing, mixing protective custody (Sensitive Needs) prisoners and/or STG Fresno Bulldogs with  
9 General Population prisoners, has been specifically singled out by the United States Supreme  
10 Court as an example of unconstitutional “deliberate indifference” to prisoners’ Eighth  
11 Amendment right to be reasonably protected from the constant threat of violence and assault by  
12 other inmates or from dangerous conditions at the prison and need not wait until an assault  
13 occurs to obtain relief (*Farmer v. Brennan*, 511 U.S. 825, 833-834 (1994)). The Ninth Circuit has  
14 also held such similar conduct to state and Eighth Amendment claim for failure to protect (see  
15 e.g., *Robinson v. Prunty*, 249 F. 3d. 862, 866-867 (9<sup>th</sup> Cir. 2001); and *Hearns v. Terhune*, 413 F.  
16 3d. 1036, 1040-1042 (9<sup>th</sup> Cir. 2005)).  
17  
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19 Moreover, the Defendants actions as claimed herein, meet the standard for  
20 deliberate indifference as these Defendants have long been aware of the substantial risk of  
21 serious harm that exists in placing any protected custody (Sensitive Needs) prisoner and/or STG  
22 Fresno Bulldogs with General Population prisoners and are blatantly choosing to disregard it.  
23

24 The memorandums Defendants authored, the statements made and the subsequent  
25 assaults that have already occurred as a result of such mixing of prisoners, clearly prove such  
26 callous disregard and further support Plaintiff’s case.  
27

### 28 **D. The Relief Sought Will Serve the Public Interest**

1 In this case, the grant of relief will serve the public interest because it is always in  
 2 the public interest for prison officials to obey the law, especially the Constitution. As submitted  
 3 to this court, the Declaration of Kim McGill further supports the public interest, as over 3,000  
 4 family members impacted by the merging of SNY prisoners with GP prisoners, have signed a  
 5 petition and held numerous public demonstrations against such merging by Defendants.  
 6 Wherefore, it is clear that the public interest would best be served by the granting of such  
 7 requested relief.  
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## 10 **II. THE PLAINTIFF SHOULD NOT BE REQUIRED TO POST SECURITY**

### 11 **AND EXHAUSTION OF ADMINISTRATIVE REMEDIES**

12 Usually a litigant who obtains interim injunctive relief is asked to post security  
 13 (Rule 65(c), Fed. R. Civ. Pro.). However, Plaintiff is an indigent prisoner and is unable to post  
 14 security. The court has discretion to excuse an impoverished litigant from posting security (see  
 15 e.g., *Elliot v. Kiesewetter*, 98 F. 3d. 47, 60 (3<sup>rd</sup> Cir. 1996) (stating that district courts have  
 16 discretion to waive the bond requirement contained in Rule 65(c) if the balance of the equities  
 17 weighs overwhelming in favor of the party seeking the injunction); *Moltan Co. v. Eagle-Pitcher*  
 18 *Industries, Inc.*, 55 F. 3d. 1171, 1176 (6<sup>th</sup> Cir. 1995) (in view of the serious danger confronting  
 19 the Plaintiff, the court should grant the relief requested without requiring the posting of security)).  
 20  
 21

22 Plaintiff should also be allowed such temporary relief without exhaustion of  
 23 administrative remedies to avoid irreparable harm. As stated within Plaintiff's verified complaint,  
 24 he and other prisoners attempted to file a group grievance with prison officials in regard to this  
 25 issue, however, it was rejected on the basis that a prisoner can not appeal a matter that has yet to  
 26 take place. This is contrary to the U.S. Supreme Court's ruling that "a prisoner need not wait  
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1 until he is actually assaulted to state a claim and obtain relief" (*Farmer*, 511 U.S. at 845).  
2 Moreover, under the Prisoner Litigation Reform Act, courts retain their traditional equitable  
3 discretion to grant temporary relief to maintain the status quo pending exhaustion (see e.g.,  
4 *Stringham v. Bick*, 2008 WL 4145473, \*4 (E.D. Cal. Sept. 3, 2008)).  
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7 **CONCLUSION**

8 For the foregoing reasons, the court should grant the motion in its entirety.

9 Dated: 4-5-19  
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11 Respectfully Submitted,

12 Danny Lucero  
13 Danny Lucero, Plaintaiff in Pro Se.  
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